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No. 98-184

In the Supreme Court of the United States

OCTOBER TERM, 1998

WYOMING, PETITIONER

v.

SANDRA HOUGHTON

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WYOMING

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether police officers who have probable cause to conduct a warrantless search of a car for contraband may search all containers within the car that could conceal the contraband, even if those containers may belong to passengers whom the police do not have probable cause to arrest.

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INTEREST OF THE UNITED STATES

This case presents the question whether the Fourth Amendment permits police officers who have probable cause to search a car for evidence of a crime to open any container in the car that could hold such evidence, even if the container may belong to a passenger whom the police officers do not have probable cause to arrest for a crime. The United States has a significant law-enforcement interest in assuring that the rule of *United States* v. *Ross*, 456 U.S. 798 (1982), which provides that police officers who have probable cause to search a motor vehicle may search all containers within the vehicle that could conceal the object of the search, is not undermined by the sorts of distinctions drawn by the

court below concerning the ownership of such containers.

STATEMENT

After trial in Wyoming district court, respondent Sandra Houghton was convicted of felony possession of methamphetamine, in violation of Wyoming Statutes Annotated § 35-7-1031(c)(iii) (Michie 1996). She was sentenced to a term of imprisonment of not less than two years or more than three years. The Wyoming Supreme Court reversed the conviction. Pet. App. 4-5, 21-22.

1. In the early morning hours of July 23, 1995, Officer Robert Delane Baldwin of the Wyoming Highway Patrol stopped a 1977 Cadillac for speeding and a burned-out brake light. The car was driven by David Young. The car had two passengers, both women, who were sitting in the front seat. Pet. App. 2; J.A. 135-137.

Officer Baldwin observed a hypodermic syringe in Young's shirt pocket. Officer Baldwin ordered Young to step outside the car and to place the syringe on the hood. When Officer Baldwin asked Young why he was carrying the syringe, Young replied that he used the syringe to take illegal drugs. Officer Baldwin, assisted by two other officers, directed the passengers to leave the car and to provide identification. Houghton, who gave her name as "Sandra James," stated that she did not have any identification with her. Pet. App. 3; J.A. 138-142.

Officer Baldwin then began to search the passenger compartment of the car for narcotics, based on Young's possession of the syringe and his admission that he had used it to inject drugs. Officer Baldwin found what he described as a "cloth lady's purse" near the middle of the back seat, "somewhat on the driver's side" as op-

posed to the passenger's side. He opened the purse and removed a wallet, which contained Houghton's driver's license. Houghton then identified the purse as hers. She stated that she had given a false name "in case things went bad." Pet. App. 3-4; J.A. 142-145, 173.

Officer Baldwin continued to search the purse, in which he found a brown bag. He opened the brown bag to find a syringe that contained an estimated 60 cubic centimeters of liquid, which field-tested positive for methamphetamine. The brown bag also held additional syringes, razor blades, and other drug paraphernalia. Officer Baldwin then noticed fresh needle track marks on Houghton's arms. He arrested Houghton for possession of a controlled substance. He completed his search of the purse, discovering a smaller black bag, which also contained syringes, razor blades, and other drug paraphernalia. Young and the second passenger were allowed to go. Pet. App. 4; J.A. 148-151, 158-159, 169.

2. Houghton was charged with one count of possession of methamphetamine in a liquid amount greater than three-tenths of a gram, in violation of Wyoming Statutes Annotated § 35-7-1031(c)(iii) (Michie 1996). J.A. 4.

Before trial, Houghton moved to suppress all evidence seized during the search of the car, contending that the search violated her rights under the Fourth and Fourteenth Amendments, as well as under the Wyoming Constitution. The district court denied the motion. The court reasoned that when a law-enforcement officer has probable cause to believe that contraband is somewhere within a car, the officer may search the car and any containers in the car, including a passenger's purse. Pet. App. 4; J.A. 12-13, 27-28.

The jury found Houghton guilty of the methamphetamine possession offense. Pet. App. 4; J.A. 269-270.

3. The Wyoming Supreme Court, by a three-to-two vote, reversed Houghton's conviction. Pet. App. 1-25.

a. The majority noted that Houghton did not contest that the Highway Patrol officers had probable cause to search Young's car for evidence of illegal narcotics. Pet. App. 6. The issue before the court was thus whether the officers' probable cause to search the car for narcotics justified a search of any object in the car that was capable of containing narcotics, even if the object belonged to a passenger whom the officers had no probable cause to believe was involved in a narcotics offense. *Ibid.*

The court noted that "[t]he scope of a warrantless search based on probable cause is no narrower—and no broader—than the scope of a search authorized by a warrant supported by probable cause." Pet. App. 7 (quoting *United States* v. *Ross*, 456 U.S. 798, 823 (1982)). The court then concluded that, if the officers had obtained a warrant authorizing the search of Young's car for narcotics, a search of the personal belongings of his passengers would not have been within the scope of the warrant. *Id.* at 17-19.

The court reached that conclusion by relying not on cases involving automobile passengers, but on cases, such as *Ybarra* v. *Illinois*, 444 U.S. 85 (1979), involving visitors to fixed premises. The court discussed the various tests adopted by the lower courts for determining whether a search of a person, or his personal effects, was within the scope of a warrant to search the premises that the person was visiting. Pet. App. 8-15. The court adopted what it termed "the 'notice' test" under which such a warrant does not permit police officers to search personal effects that they know or should know belong to a visitor, unless "[s]omeone within the premises had the opportunity to conceal the

contraband within the personal effects of the visitor immediately prior to the execution of the warrant." *Id.* at 15-16 (quoting *State* v. *Thomas*, 818 S.W.2d 350, 359 (Tenn. Crim. App. 1991)). The court concluded that the officers in this case should have known that the purse did not belong to Young, the male driver, who was the only person whom the officers had reason to believe possessed narcotics in the car. *Id.* at 17-18. The court further concluded that the officers had no probable cause to believe that narcotics were placed in the purse immediately before the car was stopped. *Id.* at 18. The court therefore concluded that the search of the purse was not "within the scope of the search of Young's car," and that the evidence obtained from the search of the purse should have been suppressed. *Id.* at 18-19.

b. The dissenting justices argued that the majority had created an unwarranted exception to the "settled principle[]" that, when police officers have probable cause to search a motor vehicle, they may search "the entire vehicle and anything in it that could contain the items being searched for." Pet. App. 23, 24 (citing *United States* v. *Ross*, *supra*; *Carroll* v. *United States*, 267 U.S. 132 (1925)). The dissent argued that Houghton's purse could have contained the controlled substance that was the object of the search of Young's car, since "[c]ommon sense tells us that the transfer of small containers of controlled substances between an automobile's occupants can occur swiftly, silently, effortlessly, and without detection by even the keenest observer." *Id.* at 25.

SUMMARY OF ARGUMENT

This Court has long recognized that, when the police have probable cause to suspect that evidence of a crime is concealed within an automobile that they have

stopped along a public roadway, the police may search the automobile immediately without obtaining a warrant from a magistrate. *Carroll* v. *United States*, 267 U.S. 132, 149, 153-154 (1925). A search conducted under the "automobile exception" to the warrant requirement may be as broad in scope as the search that a magistrate could have authorized by a warrant. The police may thus search "every part of the vehicle and its contents that may conceal the object of the search," including "compartments and containers within the vehicle whose contents are not in plain view." *United States* v. *Ross*, 456 U.S. 798, 800, 825 (1982).

There is no basis for creating an exception to that rule for those containers that are claimed by passengers whom the police do not have probable cause to arrest for a crime. To the contrary, it is reasonable to assume that a passenger's purse, bag, or other container, if physically capable of holding the object of the search, is as likely a receptacle as any other compartment or container in the automobile. This Court's cases demonstrate that the occupants of a private automobile, who are necessarily involved in the common activity of traveling together from one place to another, often are also involved in common activity relating to the object of the search. And, even if a passenger is not aware of the presence of the object within the automobile, the object still could easily have been placed among his belongings. Any container in an automobile may be assumed to be accessible to all occupants, driver and passengers alike, given the close confines of the vehicle and the occupants' opportunities to gain entry to one another's belongings in the course of travel.

The Wyoming Supreme Court did not consider the special characteristics of automobile travel in concluding that the police could not search a passenger's

property unless they had probable cause to arrest the passenger. The court instead relied on cases involving searches of houses, places of business, and other fixed premises. See, *e.g.*, *Ybarra* v. *Illinois*, 444 U.S. 85 (1979). Searches of those places, however, involve different considerations than searches of automobiles stopped in transit, and the analysis of those cases does not apply here.

The Wyoming Supreme Court recognized that its decision would require the police to draw distinctions among the containers found in an automobile, based on whether a container could reasonably belong to the driver (or someone else whom they have probable cause to arrest) as opposed to a passenger. Such distinctions are without support in this Court's decisions under the Fourth Amendment. In *Ross*, the Court concluded that the drawing of "nice distinctions" among the containers found in an automobile, based in that case on whether the owner had evinced a reasonable expectation of privacy in their contents, would be antithetical to the Fourth Amendment and to the needs of "prompt and efficient" law enforcement. 456 U.S. at 821-822.

The application of the rule of *Ross* to all containers found in an automobile, without any exception based on their ownership, is consistent with the Court's decisions on Fourth Amendment rights in the automobile context. The Court has recognized that an individual has a diminished expectation of privacy in his person and effects when he is in a car. That is true whether he is a driver or a passenger. See, *e.g.*, *Maryland* v. *Wilson*, 519 U.S. 408 (1997) (passengers, as well as the driver, may be required to exit a car during a traffic stop). And quite apart from the rule in *Ross*, a passenger's interest in avoiding a search of his belongings is overcome when the police make a probable cause arrest of the driver or

any other occupant of the car. *New York* v. *Belton*, 453 U.S. 454 (1981) (search incident to arrest may extend to the entire passenger compartment and all containers in it). It would be anomalous if the same sort of search of an automobile passenger's belongings that occurred in this case—although permissible under *Belton* as part of a search incident to the arrest of the driver or another passenger—would nonetheless be impermissible as part of a search of the automobile based on probable cause to believe that it contains evidence of a crime.

ARGUMENT

POLICE OFFICERS WHO HAVE PROBABLE CAUSE TO SEARCH AN AUTOMOBILE FOR EVIDENCE OF A CRIME MAY OPEN ANY CONTAINER IN THE AUTOMOBILE THAT COULD CONCEAL THAT EVIDENCE, WITHOUT REGARD TO WHICH OCCUPANT OF THE AUTOMOBILE OWNS THE CONTAINER

The Fourth Amendment to the United States Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend. IV. When police officers have probable cause to search an automobile stopped along a public roadway, the search is not "unreasonable," within the meaning of the Fourth Amendment, even though the police have not obtained a warrant from a magistrate. The possession of probable cause to believe that the automobile contains evidence of a crime is sufficient to justify the search. *Carroll* v. *United States*, 267 U.S. 132. 149, 153-154 (1925)) (Fourth Amendment permitted federal agents, who had probable cause to believe that illegal liquor was being transported in an automobile, to search throughout the automobile for the liquor);

Chambers v. *Maroney*, 399 U.S. 42, 48-50 (1970) (citing multiple cases applying that rule). The Court has offered two justification for what has come to be known as the "automobile exception" to the search warrant requirement: the "ready mobility" of automobiles, which can cause any "opportunity to search [to be] fleeting," and the "lesser expectation of privacy" that exists in an automobile, as a result of "the pervasive regulation of vehicles capable of traveling on the public highways." *California* v. *Carney*, 471 U.S. 386, 390-392 (1985); accord *Pennsylvania* v. *Labron*, 518 U.S. 938, 940 (1996) (per curiam).

The rule permitting a warrantless search of an automobile based on probable cause extends to closed containers within the automobile. The Court has held that, when the police "have legitimately stopped an automobile" and "have probable cause to believe that contraband is concealed somewhere within it," they "may conduct a probing search of compartments and containers within the vehicle whose contents are not in plain view," so long as those compartments and containers "may conceal the object of the search." *United States* v. *Ross*, 456 U.S. 798, 800, 825 (1982); accord *United States* v. *Johns*, 469 U.S. 478, 479-480 (1985) ("if police officers have probable cause to search a lawfully stopped vehicle, they may conduct a warrantless search of any containers found inside that may conceal the object of the search"); *California* v. *Acevedo*, 500 U.S. 565, 570 (1991) (the rule authorizing warrantless searches of containers in cars applies whether the probable cause is focused on the car as a whole or on a particular container in the car).

Contrary to the holding of the Wyoming Supreme Court, there is no valid basis for carving out an exception to that rule for purses, bags, and other containers

that belong to automobile passengers whom the police do not have probable cause to arrest. Such an exception would conflict with the Court's rationale in *Ross*, which relieved the police from having to stop to draw "nice distinctions" based on the particular characteristics of containers found in cars. 456 U.S. at 821. It would also undermine the objective of providing "clear-cut rule[s]" to guide the law-enforcement community in the conduct of automobile searches. *Acevedo*, 500 U.S. at 579.

A. The Rationale Of *Ross* Applies To All Containers In A Car That Could Conceal The Object Of The Search, Regardless Of Who Owns The Container

The Court held in *Ross* that the permissible "scope of a warrantless search based on probable cause is no narrower—and no broader—than the scope of a search authorized by a warrant supported by probable cause." 456 U.S. 823; accord *id.* at 800 (warrantless search of a car based on probable cause may be "as thorough as a magistrate could authorize in a warrant"). Accordingly, because "[a] warrant to search a vehicle would support a search of every part of the vehicle that might contain the object of the search," including closed containers within the vehicle, *id.* at 821, a warrantless search of a vehicle based on probable cause may be equally broad, extending to "every part of the vehicle and its contents that may conceal the object of the search," *id.* at 825.

The Court explained that it would be "absurd" to allow the police to conduct a thorough search of the automobile itself—even ripping open its upholstery, as they did in *Carroll*—but to disallow searches of closed compartments and containers, which are the most common places for contraband to be secreted within an automobile. *Ross*, 456 U.S. at 818-819. As the Court

observed, because contraband goods "by their very nature * * * must be withheld from public view," they "rarely are strewn across the trunk or floor of a car," but instead are "enclosed within some form of container." *Id.* at 820.

Because a warrant to search a private automobile for narcotics would support a search of anything in the automobile "that may conceal the object of the search," *Ross*, 456 U.S. at 825, a warrantless search of the same automobile based on probable cause to believe that it contains narcotics has the same valid scope. The class of items that "may conceal" narcotics includes any purse, bag, or other such container that is found in the car during the search.[1]

A search of such a container is not invalid because it may belong to an occupant of the car whom the police lack probable cause to believe is linked to the suspected illegal activity. Although the probable cause for the search may have arisen from the actions of the driver, the passenger's container, so long as it is physically capable of concealing the narcotics, is as likely a receptacle for them as any other container in the car.[2] There

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[1] If probable cause exists only as to a particular container in an automobile, of course, and "the police d[o] not have probable cause to believe that contraband [is] hidden in any other part of the automobile[,] * * * a search of the entire vehicle would * * * be [] without probable cause and unreasonable under the Fourth Amendment." *Acevedo*, 500 U.S. at 580; *Ross*, 456 U.S. at 824.

[2] Other appellate courts have recognized that, under *Ross*, when law-enforcement officers have probable cause to search a vehicle for contraband, they may search passengers' purses, bags, and other belongings that could contain the contraband, even when the evidence providing probable cause relates only to the driver or to other passengers. See, *e.g.*, *People* v. *McMillon*, 892 P.2d 879, 882-883 (Colo. 1995) (officers who had probable cause to search car for narcotics, based on driver's prior drug convictions and presence

are two "practical considerations" relating to automobile travel, *Ross*, 456 U.S. at 820, that underscore the reasonableness of that belief.

First, when people are traveling together by private automobile, they are necessarily engaged in one common consensual activity, *i.e.*, going from one point to another, by a particular route, at a particular time. It is not unreasonable to assume that they may also be engaged in other common activity associated with that travel—whether sightseeing, running errands, attending a social event or conducting business of a legal or an illegal nature—and that items associated with that common activity may be stored in one person's purse, baggage, or other container. Many of this Court's cases involving vehicle searches, from *Carroll* to *Chambers* to *Johns*, confirm that companions in travel may also be partners in crime.

That assumption is reflected in this Court's recent opinion in *Maryland* v. *Wilson*, 519 U.S. 408 (1997), which held that a police officer may order the passengers as well as the driver out of a car during a traffic stop, because "the fact that there is more than one occupant of the vehicle increases the possible sources of harm to the officer." *Id.* at 413. The Court recognized that "the possibility of a violent encounter stems not from the ordinary reaction of a motorist stopped for a speeding violation, but from the fact that evidence of a more serious crime might be uncovered during the stop." *Id.* at 414. And in that circumstance,

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of syringe between driver's seat and center console of car, could search passenger's purse); *State* v. *Fix*, 730 P.2d 601, 604 (Ore. Ct. App. 1986) (officers who had probable cause to search truck for guns, based on information that driver and male passenger had threatened persons with guns, could search female passenger's purse).

said the Court, "the motivation of a passenger to employ violence to prevent apprehension of such a crime is every bit as great as that of the driver." *Ibid.* The Court thus implicitly recognized that, when evidence of a crime exists in an automobile, the passengers and the driver may well be involved in that crime together.[3]

Second, within the close confines of the passenger compartment of a car, one person has easy access to a traveling companion's purse, packages, and other containers. See *New York* v. *Belton*, 453 U.S. 454, 460 (1981) (assuming that the entire passenger compartment is within the immediate reach of any occupant). A person may often be able to gain entry to such a container without its owner's knowledge or consent—for example, under the dark of night, while the owner is driving, sleeping, or distracted by other activities, or during rest stops when the owner leaves the container behind in the car.[4] Or the person may gain entry to the

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[3] There is particular reason to suppose that the occupants of a car are involved in a common illegal activity where—as in this case and many cases involving searches under the "automobile exception"—the evidence that provides the probable cause to search the car is within the plain view (or the plain smell) of all occupants. See, *e.g.*, *United States* v. *Crotinger*, 928 F.2d 203 (6th Cir. 1991) (police who had probable cause to search car for narcotics, based, *inter alia*, on pills observed on floor of car and scent of marijuana in passenger compartment, could search passengers' bags). Because "by their very nature [contraband] goods must be withheld from public view," *Ross*, 456 U.S. at 820, when a person does not conceal the contraband from his traveling companions, that may well be because they are also associated with the contraband.

[4] In fact, respondent suggested at trial that the brown bag that was found in her purse, and that contained the syringe with the largest quantity of methamphetamine, could have been placed there by her traveling companions, perhaps while she dozed off in

container with the owner's permission under the guise, for example, of extracting a tissue, a stick of chewing gum, or coins to pay a toll.[5]

An occupant of a car that is in the process of being stopped by the police may also find that a purse of another occupant is an inviting place in which to try to hide contraband. In *County Court of Ulster County* v. *Allen*, 442 U.S. 140 (1979), for example, the police stopped a car in which they observed several firearms in an open handbag near the front passenger seat. That seat was occupied by a 16-year-old girl; the other three occupants of the car were adult men. *Id.* at 143. The Court observed that "it was not unreasonable for [the girl's] counsel to argue and for the jury to infer that when the car was halted for speeding, the other passengers in the car anticipated the risk of a search and attempted to conceal their weapons in a pocketbook in the front seat." *Id.* at 164; see also *Rawlings* v. *Kentucky*, 448 U.S. 98, 102 n.1 (1980) (quoting the trial judge's observation that the "more plausible" explanation for how the drugs at issue came to be found in the purse of the defendant's female companion was that the defendant "saw the officers pull up out front and then

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the car or while she was making a purchase at a convenience store. J.A. 223-224, 232 (respondent's trial testimony); see also J.A. 265 (closing argument of respondent's counsel) ("Did they prove the other syringe [was respondent's]? No, who's in that car? David Young is in that car. Who else is in that car? Vanessa McQueery. Could they have had access to that purse? Yes. Could they have put something in that purse? Yes.").

[5] A passenger's packages and luggage stored in the trunk of a car are likewise accessible to the driver, who has the key to the trunk, and to other passengers, who could gain entry to the trunk on the excuse that they need to store items in, or retrieve items from, their own packages and luggage.

elected to 'push them off' on [his female companion], believing that search was probable, possible, and [i]mminent").

The mere fact that one passenger owns a particular container does not, therefore, justify an assumption that only that passenger's property can be found in the container. The passenger may be a witting or unwitting bailee of illicit goods that the owner hopes will evade detection in a less suspicious place. Even when a passenger is unaware that the driver (or another passenger) has brought narcotics into the car in which they are traveling, the possibility thus remains that the narcotics have been placed among that passenger's belongings. It consequently makes no sense to limit the rule of *Ross*, that the police may search "every part of the vehicle and its contents that may conceal the object" for which they have probable cause to search, 456 U.S. at 825, to only those contents that belong to the driver of the car or to passengers whom the police already have probable cause to arrest. Such an exception could serve only as a blueprint for criminals traveling by car to hide their contraband in the bags of the least suspicious looking passenger.

2. This Court's decisions in the Fourth Amendment area do not offer any support for such a limitation on *Ross*. The Court has previously rejected as "untenable" the suggestion that "property may not be searched unless its occupant is reasonably suspected of crime and is subject to arrest." *Zurcher* v. *Stanford Daily*, 436 U.S. 547, 559 (1978). As the Court recognized, the "critical element in a reasonable search is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the specific 'things' to be searched for and seized are located on the property to which entry is sought." *Id.* at 556.

Similarly, in *Carroll*, the Court explained that in a warrantless search of an automobile based on probable cause, "[t]he right to search and the validity of the seizure are not dependent on the right to arrest," but "are dependent on the reasonable cause the seizing officer has for belief that the contents of the automobile offend against the law." 267 U.S. at 158-159.

The Wyoming Supreme Court did not consider the distinctive characteristics of automobile travel in concluding that the officers' probable cause to search the car for narcotics did not extend to containers that, although capable of concealing the narcotics that were the object of the search, belonged to somebody other than the driver. It instead relied principally on *Ybarra* v. *Illinois*, 444 U.S. 85 (1979), which involved a search of a tavern patron based on a warrant to search the tavern.[6] In *Ybarra*, the Court held that the warrant itself did not authorize a search of the tavern patron, *id.* at 92, and that the patron's mere presence in the tavern, without more, did not give rise to a reasonable belief that the patron was armed and dangerous, as needed to justify a frisk under *Terry* v. *Ohio*, 392 U.S. 1 (1968). *Ybarra*, 444 U.S. at 93-94. The Court also rejected the State's effort to extend *Terry* to "evidence searches of persons" found at the scene of a small place to be searched under a warrant. *Id.* at 94. The Court

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[6] The court also cited various lower court decisions involving searches of visitors to fixed premises. See Pet. App. 8-15. Those cases, which we assume for present purposes to have been correctly decided in their own factual contexts, are inapposite here for the reasons discussed below. In any event, this Court has not resolved that precise issue. See *Michigan* v. *Summers*, 452 U.S. 692, 694-695 (1981) (noting the State's argument that a warrant authorizes a search of persons found at the location to be searched but not resolving the issue).

instead ruled that the probable-cause standard struck the proper balance in cases involving a search of persons for evidence. *Id.* at 95-96.

Ybarra is not applicable here. The search conducted in *Ybarra* was of a customer who was merely found in a public tavern for which a search warrant had been issued. The patron had no apparent connection with the tavern, other than as a customer, and the warrant was not supported by a showing of probable cause that related in any way to customers. For all the facts showed, Ybarra may have been at the premises simply to buy a drink. In contrast, when officers stop a private car, the occupants are all involved in a common enterprise and have had ample opportunity (and, often, incentive) to gain access to one another's belongings in the course of their travel. The probable cause for a search often arises at a time when all occupants are present, thus making it all the more plausible to suspect that the occupants may be involved in joint criminal activity. And even if there is no joint activity, one individual in a vehicle that is about to be stopped may seek to hide contraband in the effects of his companions. Those factors make it reasonable to believe that any contraband within the automobile could be concealed in any occupant's personal effects, even without individualized probable cause attaching to each occupant.[7]

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[7] Even in cases involving warrants to search fixed premises, the federal courts of appeals have recognized that a search of the purse or other personal effects of an individual who is temporarily at the premises may be within the scope of the warrant, although the individual is not an owner, resident, or employee. See, *e.g.*, *United States* v. *Johnson*, 475 F.2d 977, 979 (D.C. Cir. 1973) (warrant to search apartment for narcotics permitted search of visitor's purse, where purse was on table "resting separately from the person of its owner"). Some circuits have held that, so long as

It is true that *Ybarra* relied (444 U.S. at 94-95) on *United States* v. *Di Re*, 332 U.S. 581 (1948), which involved the search of a passenger in an automobile. *Di Re* held that the authority recognized in *Carroll* to conduct a warrantless search of a car did not extend to searching the passengers in the car. 332 U.S. at 587 ("We are not convinced that a person, by mere presence in a suspected car, loses immunities from search of his person to which he would otherwise be entitled."). The holding of *Di Re* does not assist respondent in this case. This case involves no claim that probable cause to conduct a search of a car justifies a search of all *persons* in the car. Rather, the case involves the submission that, under *Ross*, when officers have probable cause to search containers in a car, their right to search is not limited to containers owned by particular persons. Whatever the force of *Di Re* in limiting searches of

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the person found at a premises is more than a "mere visitor or passerby," a warrant to search the premises permits a search of any of the person's belongings that could contain the object of the search. *United States* v. *Gray*, 814 F.2d 49, 51 (1st Cir. 1987) (warrant to search house for narcotics permitted police to search jacket of non-resident who was found there in early morning hours after drug deal had occurred outside); see *United States* v. *Giwa*, 831 F.2d 538, 544-545 (5th Cir. 1987) (overnight guest); cf. *United States* v. *Young*, 909 F.2d 442 (11th Cir. 1990) (dicta), cert. denied, 502 U.S. 825 (1991). A passenger in a private automobile traveling along the street is not equivalent to a "mere visitor or passerby" because, among other things, he has chosen to engage in a common endeavor with the driver and any other passengers, knowing that he cannot simply walk away whenever he chooses, as could a visitor or passerby from fixed premises. Accordingly, even under the standard applied in those cases involving fixed premises, a warrant to search an automobile, and thus a warrantless search of the automobile based on probable cause, would permit a search of the passenger's belongings.

persons, but see 3 W. R. LaFave, *Search and Seizure* § 7.2(e), at 507-508 (3d ed. 1996) (finding "persuasive" the criticism of the reasoning of *Di Re* in the Model Code of Pre-Arraignment Procedure), it should not be extended to limit the right recognized under *Ross* to conduct a full search of all of the containers in a car that may conceal the object of the search.

B. The Limitation On *Ross* Announced In This Case Would Be Unworkable In Practice

The Wyoming Supreme Court, in order to implement its view of the permissible scope of probable cause searches of automobiles with multiple occupants, announced a set of guidelines to be followed by the police. Under those guidelines, a police officer may search any container that he finds in an automobile, unless he knows or should know that the container belongs to a passenger whom he does not have probable cause to arrest; that rule is subject to an exception, however, that permits a search even of such a container if an "opportunity to conceal the contraband" in the container existed "immediately prior to or during the stop." Pet. App. 16, 18. The practical difficulties that would arise in applying those guidelines, and in reaching fair, consistent, and coherent results, provides further reason not to create an exception to the clear rule of *Ross* applicable to containers owned by automobile passengers.

1. In *Ross*, while not presented with a situation involving an automobile with multiple occupants and thus multiple possible owners of any container, the Court stated a rule that "applies equally to all containers" in an automobile, whether a "paper bag" or a "locked attaché case," regardless of the extent to which the owner manifested an expectation of privacy in their

contents. 456 U.S. at 822. The Court explained that "[w]hen a legitimate search is under way, and when its purpose and its limits have been precisely defined, nice distinctions between closets, drawers, and containers, in the case of a home, or between glove compartments, upholstered seats, trunks, and wrapped packages, in the case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand." *Id.* at 821.

The Wyoming Supreme Court's rule, however, would require police officers to draw "nice distinctions" based on the particular characteristics of containers and their possible owners. The court reasoned that the officer in this case knew, or should have known, that respondent's container did not belong to the male driver of the car, simply because the container was a "lady's purse" and "men do not carry purses." Pet. App. 17. Apparently, then, if the driver of the car had been a woman, or a man from a culture in which men do carry purses,[8] the search of the purse in this case would have been permissible. And the search presumably would also have been permissible if respondent had chosen to carry her belongings in a briefcase, a gym bag, or a paper sack instead of a purse.

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[8] The leather "men's carryall," essentially a male purse, is commonly carried by European men, but less commonly by American men. See L. May, *In the Bag*, Atlanta Const., Jan. 15, 1995, at L1; see also W. Brown, *Delta to Count Laptops as Carry-Ons*, Wash. Post, Mar. 4, 1998, at C12 (noting that one U.S. airline has created an exception to its new carry-on baggage rules for "purses," either male or female). Of course, leather or cloth bags resembling purses are part of the traditional male costume of many ethnic groups, ranging from the Scots to the American Indians of the Northeast.

It makes no legal sense for an individual's Fourth Amendment right to be free from a search of his belongings to turn on such considerations. And it makes no practical sense for the police to have to devote time during car stops assessing, at the expense of "the prompt and efficient completion of the task at hand," *Ross*, 456 U.S. at 821, whether a mauve suitcase might reasonably belong to a man or whether a Pittsburgh Steelers duffel might reasonably belong to a woman.[9]

2. The Wyoming Supreme Court's guidelines also fail adequately to address the possibility, discussed above, that one occupant of a car may have secreted the contraband in another occupant's bag, with or without his consent. The court did hold that a passenger's bag may be searched, even without probable cause to believe that the passenger is involved in a crime, if there was an "opportunity" to place contraband in the bag during or "immediately" before the stop. Pet. App. 18. That test is inherently too limited in its scope, however, because the concealment could have occurred earlier. But, even on its own terms, the test requires the police to resolve difficult questions about whether an "opportunity" to conceal contraband existed and, if so, whether it was sufficiently "immediate[]" in the circumstances of a particular traffic stop. The outcome could differ depending on the time of day, the size and

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[9] Nor could the police simply accept the car occupants' own assertions as to which of them owns a particular container. The occupants, if actually engaged in a crime, could not be expected to be truthful about the ownership of a container holding evidence of the crime. In this case, for example, respondent initially told the officer that she did not have any identification with her, perhaps in an attempt to deceive the officer as to her ownership of the purse that she had left behind in the car. J.A. 140-141.

configuration of the car, and the precise positions of the occupants and their property within the car. And the police would often have little assurance, given the fact-specific nature of the inquiry, that a court would reach the same conclusion that they had reached at the time of the traffic stop.

Indeed, the majority and dissent on the Wyoming Supreme Court appear to have reached different conclusions in applying that test to the present case. The majority believed that no such opportunity existed because, once the car had been stopped, the interior of the car was illuminated and the passengers were constantly under the observation of an officer. Pet. App. 18. It was apparently irrelevant that the contraband could, for example, have been transferred to the purse on the highway, had the occupants noticed the officer parked at the side of the road completing a previous traffic stop as they went speeding past. The dissent, in contrast, seemed to believe that the requisite opportunity was present, because "the transfer of small containers of controlled substances between an automobile's occupants can occur swiftly, silently, effortlessly, and without detection by even the keenest observer." *Id.* at 25.

3. In the context of automobile searches, as in other contexts, the Court has recognized "the virtue of providing clear and unequivocal guidelines to the law enforcement profession," *Acevedo*, 500 U.S. at 577 (internal quotation marks omitted), whose members have "only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront," *Belton*, 453 U.S. at 458 (quoting *Dunaway* v. *New York*, 422 U.S. 200, 214 (1979)). The guidelines that the Wyoming Supreme Court articulated in this case have the po-

tential to create great uncertainty among law-enforcement officers as to what containers in an automobile with multiple occupants may be opened and searched.

C. The Application Of *Ross* To All Containers, Regardless Of Ownership, Accords With Related Legal Rules Under The Fourth Amendment

The rule of *Ross* that "[i]f probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of *every part of the vehicle and its contents* that may conceal the object of the search," 456 U.S. at 825 (emphasis added), is consistent with the understanding, reflected in this Court's Fourth Amendment jurisprudence, that an individual has a diminished expectation of privacy in his person and effects when he is in an automobile, whether as a driver or a passenger. That is both because an automobile "travels public thoroughfares where both its occupants and its contents are in plain view," and because an automobile is subject to "pervasive regulation by the State" such that its occupants "must expect that the State, in enforcing its regulations, will intrude to some extent upon [their] privacy." *New York* v. *Class*, 475 U.S. 106, 113 (1986).

The application of *Ross* to permit searches of any containers found in a private automobile, regardless of the ownership of the containers, is consistent with those understandings and with the legal rules that have derived from them. The Court has upheld police practices that necessarily intrude on the interests of automobile passengers to be free from searches and seizures, without regard to whether probable cause (or reasonable suspicion) exists to believe that the passengers themselves are involved in any offense. The police may stop a car if they have probable cause to

believe that a traffic violation has occurred, *Whren* v. *United States*, 517 U.S. 806 (1996), or reasonable suspicion that the driver has committed a crime, *United States* v. *Hensley*, 469 U.S. 221 (1985). As a practical matter, when the car is stopped, all of its occupants are detained, the passengers as well as the driver. *Wilson*, 519 U.S. at 413-414. The police may lawfully look inside the stopped car, if necessary using a flashlight to expose the interior of the car and its passengers. *Texas* v. *Brown*, 460 U.S. 730, 739-740 (1983) (plurality opinion). The police also may order the passengers, as well as the driver, to leave the car in order to observe them more carefully. *Wilson*, 519 U.S. at 413-414.

Even more pertinent to this case, when police officers arrest any occupant of the car for a criminal offense, they may search the entire passenger compartment of the car incident to the arrest. *Belton*, 453 U.S. at 460. The Court has not confronted the precise question whether the police, in conducting a search incident to the arrest of one occupant of a car, may search other occupants' belongings that are within the passenger compartment. But an affirmative answer is necessarily implicit in *Belton*, which recognizes that the police should be able to search anywhere "an arrestee might reach in order to grab a weapon or evidentiary ite[m]." *Id.* at 460 (quoting *Chimel* v. *California*, 395 U.S. 752, 763 (1969)). Those locations could reasonably be expected to include another occupant's purse, bag, or jacket pocket.[10]

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[10] A number of lower courts have so held. See *e.g.*, *McMillon*, 892 P.2d at 883; *State* v. *Moore*, 619 So. 2d 376, 377 (Fla. Dist. Ct. App. 1993); *People* v. *Prance*, 226 Cal. App. 3d 1525, 1533 (Ct. App. 1991); see also *United States* v. *Vaughan*, 718 F.2d 332, 334 (9th Cir. 1983) ("if [a passenger] had left the briefcase in the car, ad-

It would be anomalous if the police could, as *Belton* suggests, search a passenger's purse based on probable cause to arrest the driver or another passenger, but could not, as the court below held, search a passenger's purse based on probable cause to believe that the car contains evidence of a crime.[11] The police would then be encouraged to make more arrests of drivers, if only for traffic violations, in order to justify a comprehensive search of all containers in the passenger compartment of the car; in this case, for example, the officers needed only to have arrested the driver of the car, as they presumably could have based on the syringe in his pocket and his admission that he used it to take illegal drugs, in order to have made the search of respondent's purse permissible as a search incident to arrest. The decision below could thus have the curious effect of producing more intrusion on drivers' interest in avoiding seizures, without providing any more protection of passengers' interest in avoiding searches of their belongings in the passenger compartment of the car.

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mittedly it could have been searched" incident to the driver's arrest).

[11] The police could not search the trunk of the car, however, as part of a search incident to arrest, as they could as part of a search based on probable cause.

CONCLUSION

The judgment of the Wyoming Supreme Court should be reversed.

Respectfully submitted.

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